

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION

IN RE:

COURTNEY B. WILLIAMS and  
DEENA L. WILLIAMS,

Debtors,

---

JAMES B. ANGELL, Chapter 7 Trustee for  
COURTNEY B. WILLIAMS and DEENA L.  
WILLIAMS,

Plaintiffs,

v.

WILLIAM R. ECHOLS, TRUSTEE and WELLS  
FARGO BANK, N.A. BENEFICIARY Under  
that Certain of Trust recorded at Book 2199, page  
477, Brunswick County Register of Deeds,

Defendants / Third-Party  
Plaintiffs,

v.

STATE EMPLOYEES' CREDIT UNION,  
PHILIP E. GREER, Trustee, SHERVIN  
TAHSSILI, SANDMAN & ROSEFIELDE-  
KELLER, Trustee, DIANA D. LOREY,  
MATTHEW G. NESTOR, Trustee, BRANCH  
BANKING & TRUST COMPANY, BB&T  
COLLATERAL SERVICE CORPORATION,  
Trustee, THE BROOK FAMILY TRUST,  
JAMES R. PREVATTE, JR., Trustee,  
COURTNEY B. WILLIAMS and  
DEENA L. WILLIAMS,

Third-Party Defendants.

---

**Chapter 7**

**Bankruptcy Case No.: 08-2284-8-JRL**

**Adversary Proceeding No.: 08-00099-8-  
JRL**

**DESIGNATION OF THE ITEMS TO BE INCLUDED IN THE  
RECORD ON APPEAL AND STATEMENT OF ISSUES**

(Bankruptcy Rule 8006)

NOW COMES William R. Echols, Trustee and Wells Fargo Bank, N.A. Beneficiary Under that Certain of Trust recorded at Book 2199, page 477, Brunswick County Register of Deeds, Defendants and Third Party Plaintiffs (“Appellants”), through counsel, pursuant to Bankruptcy Rule 8006, and hereby submit their designation of the items to be included in the Record on Appeal in the above-captioned matter to be considered by the United States District Court for the Eastern District of North Carolina and make a statement of the issues to be presented, as follows:

**I. STATEMENT OF ISSUES TO BE DECIDED ON APPEAL**

1. Whether the Bankruptcy Court erred in granting summary judgment in favor of the Plaintiff Trustee in the above-captioned Adversary Proceeding on January 28, 2009 (the “Order”).
2. Whether the Bankruptcy Court erred by failing to view all evidence presented in the light most favorable to the Appellant as the non-moving party.
3. Whether the Bankruptcy Court erred by reaching numerous factual conclusions in its Order where the Defendant had no opportunity to conduct any discovery by operation of Rule 26(d) of the Federal Rules of Civil Procedure and Bankruptcy Rule 7026.
4. Whether the Bankruptcy Court erred by reaching factual conclusions in its Order where there was no evidence presented to support the same.
5. Whether the Bankruptcy Court erred by finding and determining as a matter of law, prior to the conduct of any discovery by any party, that the Appellant’s Deed of Trust was void and ineffective as a lien upon the real property in question.

6. Whether the Bankruptcy Court erred by ruling against the Appellant as a matter of law where no evidence was presented to establish that, on the date of execution of said Deed of Trust, the Debtors were married.

7. Whether the Bankruptcy Court erred by ruling against the Appellant as a matter of law where the only evidence before the Court established that the Trustee did not occupy the status of a *bona fide* purchaser of the real property in question from the Debtors on the date of the filing of their Chapter 7 petition as the matters of public record were sufficient to put any purchaser on notice that the failure of the female Debtor to execute the Deed of Trust was a mistake, if the evidence showed that the Debtors were married at the time of the execution of the Deed of Trust.

8. Whether the Bankruptcy Court improperly applied North Carolina law to reach the conclusion that the failure of the female Debtor to execute the Deed of Trust rendered the same wholly incapable of providing a subsequent purchaser with constructive notice of any kind.

9. Whether the Bankruptcy Court erred by finding and determining as a matter of law, prior to the conduct of any discovery by any party, that no mutual mistake existed as between the Debtors and the Appellant in the execution of the Deed of Trust, and thus that the remedy of reformation was unavailable, where the pleadings and only evidence presented by any party compelled the opposite conclusion when viewed in the light most favorable to the Appellant.

10. Whether the Bankruptcy Court erred by finding and determining as a matter of law, prior to the conduct of any discovery by any party, that the failure of the Deed of Trust to be executed by the female Debtor was a unilateral mistake of law on the part of the Appellant when viewed in the light most favorable to the Appellant.

11. Whether the Bankruptcy Court erred by finding and determining as a matter of law, prior to the conduct of any discovery by any party, that the Appellant's Deed of Trust did not encumber the real property at issue in the above-captioned Adversary Proceeding and that the Appellant is not entitled to a secured claim in the Debtor's bankruptcy proceeding.

12. Whether the Bankruptcy Court erred by considering late-filed evidence and Affidavits of the Trustee in ruling against the Appellant as a matter of law.

13. Whether the Bankruptcy Court abused its discretion by considering late-filed evidence and Affidavits of the Trustee in ruling against the Appellant as a matter of law.

14. Whether the Appellant has been deprived of the benefits of Due Process in the instant Adversary Proceeding.

**II. DESIGNATION OF ITEMS FROM BANKRUPTCY CASE # 08-2284  
AND ADVERSARY PROCEEDING #08-99**

<b>Docket No.</b>	<b>Date</b>	<b><u>Items to be Included</u> 08-2284</b>
1	04/03/2008	Chapter 7 Voluntary Petition Filed by Courtney B. Williams, Deena L. Williams
30	06/12/2008	Amended Statement of Intent
92	08/21/2008	Amended Schedule C filed by Algernon L. Butler, Jr. on behalf of Courtney B. Williams, Deena L. Williams.
<b>Docket No.</b>	<b>Date</b>	<b><u>Items to be Included</u> 08-0099</b>
1	06/30/2008	Adversary case 08-00099-8. Complaint by James B Angell, Trustee against William R. Echols, Trustee, WELLS FARGO BANK, N.A.
2	07/01/2008	Summons Issued On William R. Echols, Trustee; WELLS FARGO BANK, N.A.
3	07/01/2008	Summons Service Executed on William R. Echols, Trustee; WELLS FARGO BANK, N.A.
4	07/01/2008	Affidavit of Jennifer L. McInnes

5	07/01/2008	Motion For Summary Judgment Filed by Trustee
6	07/01/2008	Memorandum Of Law In Support Of Motion For Summary Judgment
8	07/03/2008	Order Regarding Motion For Summary Judgment
10	07/21/2008	Motion For Summary Judgment Filed by Trustee
11	07/21/2008	Memorandum of Law
14	07/28/2008	Notice Of Appearance Filed By Alan B. Powell on behalf of WELLS FARGO BANK, N.A.
15	07/31/2008	Answer to Complaint, Counterclaim by William R. Echols, Trustee, WELLS FARGO BANK, N.A. against James B Angell, Trustee, Third-Party Complaint by William R. Echols, Trustee, WELLS FARGO BANK, N.A. against Deena L. Williams, Courtney B. Williams, James R. Prevatte Jr., The Brook Family Trust, BB&T Collateral Service Corporation, Branch Banking and Trust Company, Matthew G. Nestor, Diana D Lorey, Sandman & Rosefielde-Keller, Shervin Tahssili, Phillip E Greer, State Employees' Credit Union. filed by Alan B. Powell on behalf of William R. Echols, Trustee, WELLS FARGO BANK, N.A.
17	08/01/2008	Summons Issued On James B Angell, Trustee; BB&T Collateral Service Corporation; Branch Banking and Trust Company; Phillip E Greer; Diana D Lorey; Matthew G. Nestor; James R. Prevatte Jr.; Sandman & Rosefielde-Keller; State Employees' Credit Union; Shervin Tahssili; The Brook Family Trust; Courtney B. Williams; Deena L. Williams
18	08/04/2008	Summons Service Executed on Deena L. Williams
19	08/04/2008	Summons Service Executed on Courtney B. Williams
20	08/04/2008	Summons Service Executed on Phillip E. Greer
21	08/04/2008	Summons Service Executed on Shervin Tahssili
22	08/04/2008	Summons Service Executed on Matthew G. Nestor
23	08/04/2008	Summons Service Executed on Diana D. Lorey
24	08/04/2008	Summons Service Executed on James R. Prevatte Jr.
25	08/04/2008	Summons Service Executed on The Brook Family Trust

26	08/04/2008	Summons Service Executed on Branch Banking and Trust Company
27	08/04/2008	Summons Service Executed on Sandman & Rosefielde-Keller
28	08/04/2008	Summons Service Executed on State Employees' Credit Union
29	08/04/2008	Summons Service Executed on BB&T Collateral Service Corporation
30	08/07/2008	Summons Service Executed on Phillip E. Greer
31	08/07/2008	Summons Service Executed on Phillip E. Greer
32	08/12/2008	Response to Motion For Summary Judgment
34	08/15/2008	Notice of Hearing - Motion For Summary Judgment filed by James B Angell on behalf of James B Angell, Trustee. Hearing scheduled for 10/20/2008 at 03:00 PM at Raleigh Courtroom
36	08/27/2008	Summons Reissued On Sandman & Rosefielde-Keller; The Brook Family Trust
37	08/29/2008	Summons Service Executed on The Brook Family Trust
38	08/29/2008	Summons Service Executed on Sandman & Rosefielde-Keller
39	09/02/2008	Answer To Counterclaim - Trustee
40	10/15/2008	Affidavit For Entry of Default as to BB&T Collateral Service Corporation, Branch Banking and Trust Company, Phillip E Greer, Diana D Lorey, Matthew G. Nestor, James R. Prevatte Jr., Sandman & Rosefielde-Keller, State Employees' Credit Union, Shervin Tahssili, The Brook Family Trust, Courtney B. Williams, Deena L. Williams
42	10/15/2008	Affidavit of Douglas W. Baxley in opposition to Summary Judgment – Filed by Wells Fargo
44	10/17/2008	Amended Affidavit For Entry of Default as to BB&T Collateral Service Corporation, Phillip E Greer, Diana D Lorey, Matthew G. Nestor, James R. Prevatte, Trustee Jr., Sandman & Rosefielde-Keller, Shervin Tahssili, Courtney B. Williams, Deena L. Williams
46	10/17/2008	Notice of Continued/Rescheduled Hearing - Motion For Summary Judgment filed by James B Angell on behalf of James B Angell, Trustee. Hearing scheduled for 10/29/2008 at 02:00 PM at Raleigh Courtroom

48	10/20/2008	Summons reissued on Branch Banking and Trust Company and State Employees' Credit Union
49	10/21/2008	Summons Service Executed on State Employees' Credit Union
50	10/21/2008	Summons Service Executed on Branch Banking and Trust Company
51	10/21/2008	Summons Service Executed on State Employees' Credit Union
52	10/22/2008	Entry of Default – BB&T Collateral Service Corporation, Phillip E Greer, Diana D Lorey, Matthew G. Nestor, James R. Prevatte, Trustee Jr., Sandman & Rosefielde-Keller, Shervin Tahssili, Courtney B. Williams, Deena L. Williams
53	10/22/2008	Affidavit Of Lender, Wells Fargo Bank, NA
56	10/27/2008	Memorandum of Law
57	10/28/2008	Motion To Strike – Wells Fargo
58	10/29/2008	Motion To Strike and Response to Motion To Strike - Trustee
59	10/29/2008	Order Denying Motion To Strike
61	10/29/2008	Response to Motion To Strike filed by Counter-Defendant James B Angell, Trustee, Plaintiff James B Angell, Trustee
63	10/30/2008	Notice Of Continued/Rescheduled Hearing - Motion For Summary Judgment filed by James B Angell on behalf of James B Angell, Trustee. Motion To Strike filed by James B Angell on behalf of James B Angell, Trustee. Hearing scheduled for 12/4/2008 at 11:00 AM at Raleigh Courtroom
65	11/05/2008	Notice Of Continued/Rescheduled Hearing - Motion For Summary Judgment filed by James B Angell on behalf of James B Angell, Trustee. Motion To Strike filed by James B Angell on behalf of James B Angell, Trustee. Hearing scheduled for 12/4/2008 at 02:00 PM at Raleigh Courtroom
67	11/17/2008	Memorandum of Law Supp. Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment
69	11/17/2008	Amended Affidavit Of Douglas W. Baxley and Exhibits
71	12/02/2008	Notice of Voluntary Dismissal as to The Brook Family Trust

72	12/02/2008	Brief and Attachments – Partial Transcript of Debtor’s 341 Meeting; Affidavit of James B. Angell
73	12/03/2008	Notice Of Continued/Rescheduled Hearing - Motion For Summary Judgment filed by James B Angell on behalf of James B Angell, Trustee. Motion To Strike filed by James B Angell on behalf of James B Angell, Trustee. Hearing scheduled for 12/4/2008 at 09:30 AM at Raleigh Courtroom
75	12/03/2008	Second Motion To Strike – Wells Fargo
77	12/04/2008	PDF with attached Audio File. Court Date & Time
78	12/05/2008	Order Denying Motion To Strike
79	01/28/2009	Order Granting Motion For Summary Judgment
80	02/04/2009	Notice of Appeal
85	02/09/2009	Notice of Voluntary Dismissal as to James R. Prevatte, Trustee Jr.

Respectfully submitted, this the 12<sup>th</sup> day of February, 2009.

/s/: Alan B. Powell

Alan B. Powell, N.C.S.B. # 17555

Christopher C. Finan, N.C.S.B. # 27820

*Attorneys for Defendants*

OF COUNSEL:

ROBERSON HAWORTH & REESE, PLLC

300 N. Main Street; Suite 300

P.O. Box 1550

High Point, NC 27261

Telephone: 336-889-8733

Facsimile: 336-885-1280

Email: [apowell@rhrlaw.com](mailto:apowell@rhrlaw.com)

[cfinan@rhrlaw.com](mailto:cfinan@rhrlaw.com)



UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION

IN RE:

COURTNEY B. WILLIAMS and  
DEENA L. WILLIAMS,

Debtors,

---

JAMES B. ANGELL, Chapter 7 Trustee for  
COURTNEY B. WILLIAMS and DEENA L.  
WILLIAMS,

Plaintiffs,

v.

WILLIAM R. ECHOLS, TRUSTEE and WELLS  
FARGO BANK, N.A. BENEFICIARY Under  
that Certain of Trust recorded at Book 2199, page  
477, Brunswick County Register of Deeds,

Defendants / Third-Party  
Plaintiffs,

v.

STATE EMPLOYEES' CREDIT UNION,  
PHILIP E. GREER, Trustee, SHERVIN  
TAHSSILI, SANDMAN & ROSEFIELDE-  
KELLER, Trustee, DIANA D. LOREY,  
MATTHEW G. NESTOR, Trustee, BRANCH  
BANKING & TRUST COMPANY, BB&T  
COLLATERAL SERVICE CORPORATION,  
Trustee, THE BROOK FAMILY TRUST,  
JAMES R. PREVATTE, JR., Trustee,  
COURTNEY B. WILLIAMS and  
DEENA L. WILLIAMS,

Third-Party Defendants.

---

**Chapter 7**

**Bankruptcy Case No.: 08-2284-8-JRL**

**Adversary Proceeding No.: 08-00099-8-  
JRL**

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that on the below date the undersigned served a copy of the foregoing **Designation of Items to be Included in Record on Appeal and Statement of Issues** by electronic means or by depositing a copy in a self-addressed, post paid envelope to the following parties-in-interest by depositing the same in a Post Office or official depository under the exclusive care and custody of the United States Postal Service:

Marjorie Lynch  
U.S. Bankruptcy Administrator  
P.O. Box 3758  
Wilson, NC 27895-3758

James B. Angell, Trustee  
P.O. Box 12347  
Raleigh, NC 27605-2347  
*Plaintiff and Trustee*

Branch Banking and Trust Company  
c/o CT Corporation System  
Registered Agent  
225 Hillsborough Street  
Raleigh, NC 27603

BB&T Collateral Service Corporation  
c/o CT Corporation System  
Registered Agent  
225 Hillsborough Street  
Raleigh, NC 27603

State Employees' Credit Union  
c/o James C. Blaine, Registered Agent  
1000 Wade Avenue  
Raleigh, NC 27605

Courtney B. Williams  
Deena L. Williams  
108 Sellers Street  
Oak Island, NC 28465

Sandman & Rosefielde-Keller  
c/o Officer, Director or Managing Agent  
7101 Creedmoor Road, Suite 142  
Raleigh, NC 27613

William R. Echols, Trustee  
7301 Carmel Executive Parkway, Suite 304  
Charlotte, NC 28226  
*Defendant*

Matthew G. Nestor  
8903 East Oak Island Drive, Suite 2  
Oak Island, NC 28465

Philip E. Greer  
1176 St. Mark's Church Road  
Burlington, NC 27215-9796

This the 12<sup>th</sup> day of February, 2009.

/s/: Alan B. Powell

Alan B. Powell, N.C.S.B. # 17555  
Christopher C. Finan, N.C.S.B. # 27820  
*Attorneys for Defendants*

**OF COUNSEL:**

ROBERSON HAWORTH & REESE, PLLC  
300 N. Main Street; Suite 300  
P.O. Box 1550  
High Point, NC 27261  
Telephone: 336-889-8733  
Facsimile: 336-885-1280